

## **REMARKS**

Reconsideration of the application and claims in light of the foregoing amendments and following remarks is respectfully requested.

### **I. Status of the Claims**

Claims 45-47 have been amended to include the subject matter of claim 8, which has now been cancelled. Claims 2, 3, 9, 11-13, 15-18, 20, 23-26, 30, 37-39 and 43 have been amended to correct dependency or formalistic errors, and to reflect the amendments to claims 45-47. No new matter is added.

Claims 1, 7, 14 and 40 were previously cancelled without prejudice or disclaimer of the subject matter contained therein. Claim 32 is cancelled herein without prejudice or disclaimer.

Claims 2-6, 9-13, 15-31, 33-39 and 41-47 are currently pending.

### **II. Provisional Double Patenting Rejection**

The Examiner has indicated that claims 2-6, 9-13, 15-39 and 41-47 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-33 of co-pending Application No. 10/630,378. As previously requested, since this rejection is provisional, response is respectfully deferred until some of the allegedly conflicting claims are allowed.

### **III. Rejections under 35 U.S.C. 112**

Claims 2-6, 8-13, 15-39 and 41-47 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. This rejection is respectfully traversed.

Claims 2-6, 8-13, 15-39 and 41-44 were rejected since they depend from claims 45-47 which recited a "two-dimensional blank" and further since claim 13 also positively recited a "two-dimensional blank." The Examiner asserts that all real world objects inherently have three-

dimensions. Accordingly, claims 45-47 have been amended to delete “two-dimensional” and claim 13 has been amended to clarify that the blank is flat.

Claims 11, 12 and 17 were rejected because they recited multiple layers and depend from claim 46 which previously did not require more than one layer. Claim 46 has been amended to recite that the blank is formed from at least two layers. It is respectfully submitted that each claim depending from claim 46 has been amended to reflect the amendment thereto.

Claim 16 was rejected because it was unclear to the Examiner what the layer is an article of. Examiner is correct that Applicants intended the recitation to be “wherein one of the layers is an elastic, yet permanently ductile, and after the shaping, dimensionally stable layer” and claim 16 has been amended accordingly.

Claim 23 was rejected because “the overlap region” lacked antecedent basis. Claim 23, as well as claim 18, have been amended to depend from claim 6 which recites that the blank is connected with itself in an overlap region.

Claim 24 was rejected since it referred to printing before lamination, but did not recite that the layers are laminated. Claim 24 has been amended to additionally recite that the layers of the blank are laminated.

Claim 26 was rejected because it was unclear to the Examiner what the lower end sections are connected to. Claim 26 has been amended to recite that the lower end sections of the blank are connected to one another.

Claim 30 was rejected since it recited two layers, but referred to a case where only one layer is provided. Claim 30 has been amended to recite that the printing is provided on an outer side of the container wall, rather than on a single layer.

Claim 32 was rejected for containing the allegedly indefinite terms “impact resistant” and “resistant to puncturing.” Claim 32 has been cancelled, thereby rendering this rejection moot.

Claim 37 was rejected since it did not positively recite that the container is for containing food, and thus the Examiner asserts that it is impossible for food to be partially removed. Claim 37 has been amended to further recite that the container is a container for food.

Claim 39 was rejected since the Examiner contends it is unclear how the opening edge can be both partial and continuous. In paragraph [0061] of the publication of the present specification, U.S. Publication No. 2005/0006449, Applicant describes that the opening edge may not extend around the entire periphery of the container, in which case it is only partially formed or partially continuous. For clarification, claim 39 has been amended to recite that the opening edge is partially formed.

In view of the above amendments, it is respectfully submitted that each issue raised by the Examiner under 35 U.S.C. § 112, second paragraph, has been addressed and that the pending claims 2-6, 9-13, 15-31, 33-39 and 41-47 are now definite. Reconsideration and withdrawal of the rejections to subsisting claims 2-6, 9-13, 15-31, 33-39 and 41-47 under 35 U.S.C. § 112, second paragraph, is therefore respectfully requested.

#### **IV. Claim Objections**

Claim 13 was objected as being of improper dependent form for failing to further limit the subject matter of a previous claim. As set forth in the preceding section, claim 46 no longer recites that the blank is two-dimensional and claim 13 has been amended to further limit claim 46 by reciting that the blank is flat. Reconsideration and withdrawal of the objection to claim 13 is therefore respectfully requested.

Claim 43 was objected to since the Examiner contends that it should read “A blank for the manufacture...” instead of “Blank for manufacture...” Claim 43 has been amended accordingly, and reconsideration and withdrawal of the objection thereto is therefore respectfully requested.

**V. Rejections under 35 U.S.C. § 102**

Claims 3-6, 8, 11-13, 15-22, 24, 26-30, 32-34, 36, 39 and 41-47 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,235,963 to McGirr et al. ("McGirr"). Claims 8 and 32 have been cancelled. The rejection with respect to the remaining claims is respectfully traversed.

Independent claims 45 and 46 have been amended to recite that "the container wall is formed from a blank having at least two layers of a transparent, fluid tight material which can be shaped for forming the container." Similarly, independent claim 47 recites that the blank "is entirely formed from multiple layers of at least one temperature stable compound which is transparent and fluid tight [and] which can be shaped for forming the container." It is respectfully submitted that McGirr fails to disclose at least this feature.

By contrast, McGirr describes a container formed from a single sheet of a transparent cellulose material. See McGirr, col. 1, lines 4-6. Once the container has been formed, the interior of the container is sprayed with a medium to sterilize and moisture-proof the container. See McGirr, col. 4, lines 16-35. The Examiner contends that this spray coating constitutes a second transparent layer. See Detailed Action, Page 10, Paragraph 22. However, even if the spray coating can be seen as a second layer, it is not a layer of material that can be shaped for forming the container as recited in claims 45-47. Moreover, claims 45-47 recite that the blank is formed from at least two layers while the blank of McGirr is formed only from a single layer of a cellophane material. See McGirr, FIG. 1 and col. 2, lines 19-25.

Since McGirr fails to disclose at least the above-recited features it cannot anticipate claims 45-47 or claims 3-6, 11-13, 15-22, 24, 26-30, 33, 34, 36, 39 and 41-44 depending from claim either 45 or 46. Reconsideration and withdrawal of the rejections of claims 3-6, 11-13, 15-22, 24, 26-30, 33, 34, 36, 39 and 41-44 under 35 U.S.C. 102(b) based on McGirr is therefore respectfully requested.

**VI. Rejections under 35 U.S.C. § 103**

Claims 2, 9, 10, 23, 31 and 38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McGirr in view of U.S. Patent No. 3,934,749 to Andrulionis (“Andrulionis”). This rejection is respectfully traversed.

Independent claims 45 and 46 have been amended to recite that “the container wall is formed from a blank having at least two layers of a transparent, fluid tight material which can be shaped for forming the container.” Similarly, independent claim 47 recites that the blank “is entirely formed from multiple layers of at least one temperature stable compound which is transparent and fluid tight [and] which can be shaped for forming the container.” It is respectfully submitted that McGirr and Andrulionis, alone or in combination, fail to disclose or suggest at least this feature.

In contrast, as set forth above, McGirr describes a blank that is made out of only a single layer of cellophane. Andrulionis, on the other hand, fails to disclose even a blank for forming the container, and suggests by the continuity from the container walls into the bottom of the container (see FIG. 1 of Andrulionis) that the container is not formed from a blank. Thus, neither McGirr nor Andrulionis disclose or suggest a blank formed from at least two layers as recited in claims 45-47. Moreover, Andrulionis also does not disclose at least two transparent layers that can be shaped to form the container. While the outside layer of the container and the lid of Andrulionis may be transparent, it is evident that the inner layer is not transparent since Andrulionis describes that the plastic for the inner layer of the lid is chosen based on “whether or not it is desirable to visually inspect the contents of the container.” See Andrulionis, col. 4, lines 24-53.

Since McGirr and Andrulionis, alone or in combination, at least fail to disclose or suggest a blank having at least two transparent layers that can be shaped to form the container, they cannot render claims 45-47, or claims 2, 9, 10, 23, 31 and 38 depending from either claim 45 or

46, obvious. Reconsideration and withdrawal of the rejections to claims 2, 9, 10, 23, 31 and 38 under 35 U.S.C. § 103(a) is therefore respectfully requested.

Claim 35 was rejected under 35 U.S.C. § 103(a) as being unpatentable over McGirr in view of Andrulionis, and in further view of U.S. Patent No. 6,210,766 to McLaughlin (“McLaughlin”). This rejection is respectfully traversed.

As set forth above, it is respectfully submitted that any combination of McGirr and Andrulionis fails to disclose or suggest a blank having at least two transparent layers that can be shaped to form the container. McLaughlin describes a multi-layer tube that may be provided with holographic print on one layer, but is silent as to any of the layers being transparent. See McLaughlin, Abstract.

Since McGirr, Andrulionis and McLaughlin, alone or in combination, at least fail to disclose or suggest a blank having at least two transparent layers that can be shaped to form the container, they cannot render claim 46, or claim 35 depending from claim 46, obvious. Reconsideration and withdrawal of the rejection of claim 35 under 35 U.S.C. § 103(a) is therefore respectfully requested.

Claims 2, 9, 10, 23, 31 and 38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McGirr in view of Andrulionis, and in further view of U.S. Patent No. 2,689,424 to Clagett (“Clagett”). This rejection is respectfully traversed.

As set forth above, it is respectfully submitted that any combination of McGirr and Andrulionis fails to disclose or suggest a blank having at least two transparent layers that can be shaped to form the container. Clagett describes a drinking mug which has transparent and translucent wall portions which provides different images based on whether the mug is filled. See Clagett, FIG. 1 and col. 1, lines 41-46. No blank or layers are used in Clagett, rather, the mug is formed with one half of the mug being translucent and the other half being transparent.

See Clagett, FIG. 4. Thus, Clagett fails to disclose or suggest a blank formed from transparent layers.

Since McGirr, Andrulionis and Clagett, alone or in combination, at least fail to disclose or suggest a blank having at least two transparent layers that can be shaped to form the container, they cannot render claim 46, or claim 37 depending from claim 46, obvious. Reconsideration and withdrawal of the rejection of claim 37 under 35 U.S.C. § 103(a) is therefore respectfully requested.

**CONCLUSION**

In view of the foregoing amendments and arguments, the subsisting claims in this application are believed to be in condition for allowance and such action is earnestly solicited.

If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number set forth below.

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Respectfully submitted,

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